

AUG 03 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JESUS PEREZ-VELAZQUEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-70493

Agency No. A96-060-632

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Jesus Perez-Velazquez, native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We review for abuse of discretion the denial of a motion to

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion by denying the motion to reopen, because the BIA considered the evidence Perez-Velazquez submitted and acted within its broad discretion in determining that the evidence was insufficient to warrant reopening. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (The BIA's denial of a motion to reopen shall be reversed only if it is "arbitrary, irrational or contrary to law.").

Perez-Velazquez's contention that the BIA violated its regulations in denying the motion to reopen fails to state a colorable due process claim. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005) ("[t]raditional abuse of discretion challenges recast as alleged due process violations do not constitute colorable constitutional claims that would invoke our jurisdiction.").

Because the BIA's conclusion that Perez-Velazquez failed to make a prima facie showing that his child will suffer exceptional and extremely unusual hardship is dispositive, we do not consider contentions relating to physical presence or voluntary departure.

PETITION FOR REVIEW DENIED.